

1 Jay M. Coggan (SBN 86107)  
jmc@cogganlaw.com  
2 David N. Tarlow (SBN 214050)  
dnt@cogganlaw.com  
3 Joshua G. Blum (SBN 249082)  
jgb@cogganlaw.com  
4 **COGGAN & TARLOW**  
1925 Century Park East, Suite 2320  
5 Los Angeles, California 90067  
Telephone (310) 407-0922  
6 Facsimile (310) 407-0923

7 Attorneys for RMG TECHNOLOGIES, INC., a Delaware corporation

8  
9 **UNITED STATES DISTRICT COURT**  
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11  
12 TICKETMASTER, L.L.C., a  
Virginia limited liability company,

13 Plaintiff,

14 v.

15 RMG TECHNOLOGIES, INC., a  
16 Delaware corporation and DOES 1  
through 10, inclusive,

17 Defendants.

Case No. CJ 07-2534 ABC(JCx)

**DISCOVERY MOTION**

**RMG TECHNOLOGIES, INC.'S  
SUPPLEMENTAL MEMORANDUM  
OF LAW IN SUPPORT OF ITS  
MOTION TO COMPEL  
TICKETMASTER'S PRODUCTION  
OF DOCUMENTS.**

Hearing Date: April 22, 2008  
Hearing Time: 1:30 p.m.  
Location: Courtroom 20  
Pre-Trial Conference: 9/15/08  
Trial: 10/21/08  
Discovery Cutoff: 5/23/08

21  
22 **I. TICKETMASTER SHOULD BE COMPELLED TO PRODUCE**  
23 **ALL RECORDS CONCERNING ITS CONVENIENCE**  
24 **CHARGES PURSUANT TO RMG REQUEST FOR**  
25 **PRODUCTION NUMBERS 1, 2, 3 AND 6, AS THESE RECORDS**  
26 **ARE RELEVANT TO DEFENDING AGAINST**  
27 **TICKETMASTER'S REQUEST FOR COMPENSATORY**  
28 **DAMAGES.**

It is extremely well settled law throughout this country that compensatory damages are those damages intended to make the plaintiff whole. *Adray v. Adry-*

1 *Mart, Inc.*, (9<sup>th</sup> Cir. 1995), 76 F.3d 984, 988. *Geddes v. United Financial Group*,  
2 (9<sup>th</sup> Cir. 1977) 559 F.2d 557, 560. *Hendry v. Pelland*, (C.A.C.D. 1996) 73 F.3d  
3 397, 402.

4 “[A] cardinal principle of law is that in the absence of punitive damages a  
5 plaintiff can recover no more than the loss actually suffered.’ For ‘when the  
6 plaintiff has accepted satisfaction in full for the injury done him, from whatever  
7 source it may come, we said, ‘he is so far affected in equity and good conscience,  
8 that the law will not permit him again to recover for the same damages.’ The office  
9 of compensatory damages is to make the plaintiff whole, but certainly not more  
10 than whole.” *Kassman v. American University*, (C.A.D.C. 1976) 546 F.2d  
11 1029,1033.

12 In TICKETMASTER, LLC’S (“Ticketmaster”) First Amended Complaint, it  
13 seeks to be awarded compensatory damages on its: 1) First Claim for Copyright  
14 Infringement; 2) Second Claim for Violation of the Digital Millennium Copyright  
15 Act; 3) Fourth Claim for Violation of California Penal Code § 502; 4) Seventh  
16 Claim for Breach of Contract; and 5) Eight Claim for Inducing Breach of Contract.  
17 These compensatory damages claims, in part, arise from Ticketmaster’s claim that  
18 it sustained increased costs of data storage, trouble shooting and system  
19 maintenance as a result of RMG’s software. Further, in Ticketmaster’s Third Claim  
20 for Violation of the Computer Fraud and Abuse Act, it seeks economic damages for  
21 its increased costs of data storage, trouble shooting and system maintenance.

22 Moreover, in Ticketmaster’s response to RMG TECHNOLOGIES, INC.’s  
23 (“RMG”) request for production numbers 4 and 5, Ticketmaster has specifically  
24 admitted that its convenience charges are based, among other things, on Plaintiff’s  
25 cost of doing business, which is in turn affected by the cost of, among other things,  
26 Plaintiff’s attempt to maintain a secure website and payment to its information  
27 technology staff.  
28

1 It is respectfully submitted that the information requested concerning  
2 Ticketmaster's convenience charges, including, but not limited to Ticketmaster's  
3 method of determining convenience charges, the factors considered in determining  
4 convenience charges, the identity of the persons involved in the decision making  
5 process for determining convenience charges and the research which Ticketmaster  
6 conducted in determining its convenience charges is directly relevant to RMG's  
7 defenses. Case 2:07-cv-02534-ABC-JC Document 107 Filed 04/08/2008 Page 3 of 6

8 First, and by way of example only, if documents concerning Ticketmaster's  
9 method of determining its charges (including its research) is to take all of its costs  
10 and roll them into its convenience charges, then Ticketmaster would not be entitled  
11 to any compensatory damages in this matter relative to its data storage, trouble  
12 shooting, system maintenance and internet security, as Ticketmaster would already  
13 have been made whole through the sale of tickets to its customers. Further, if  
14 Ticketmaster took only  $\frac{3}{4}$  of its costs and rolled them into its convenience charges,  
15 then Ticketmaster's claim for compensatory damages relative to its internet  
16 security, maintenance and construction would be only 25% of its total costs for  
17 same. RMG needs this information in order to defend this lawsuit and disprove  
18 Ticketmaster's damages claims.

19 Second, RMG needs to know what factors Ticketmaster has taken into  
20 account when determining convenience charges, as there may be factors which  
21 Ticketmaster does not roll into its convenience charges for which RMG may be  
22 specifically required to compensate Ticketmaster. RMG needs to know what these  
23 factors are to prepare its defense, to determine whether RMG's alleged actions have  
24 any effect on these factors in order to show that RMG's alleged actions have no  
25 effect upon said factors and to evaluate RMG's possible exposure in this matter.  
26 Without having documents showing what these factors are, RMG is in no position  
27 to defend against Ticketmaster's claims.  
28

1 Third, documents concerning the identities of the persons involved in the  
2 decision making process for convenience charges are relevant in that they will lead  
3 to the discovery of witnesses on the subject.

4 All of these requested documents are extremely relevant and important to  
5 RMG's defense in this matter, and same should be produced forthwith.

6 **II. TICKETMASTER SHOULD PRODUCE DOCUMENTS**  
7 **CONCERNING CLAIMS IT MADE FOR LOSS OF**  
8 **GOODWILL.**

9 Ticketmaster claims it lost goodwill due to RMG's actions. If Ticketmaster's  
10 claim is meritorious, it should have documentation to support same, such as tax  
11 returns, financial statements and profit and loss statements which show a loss of  
12 goodwill. If Ticketmaster does not possess these types of documents which reflect  
13 the loss of goodwill, that would be some evidence of the fact that Ticketmaster has  
14 not lost goodwill based upon the actions of RMG. Therefore, Ticketmaster should  
15 produce same.

16 Ticketmaster has asserted that RMG is going on a fishing expedition for the  
17 production of sensitive financial data and tax returns which it states is disfavored  
18 pursuant to 26 U.S.C. § 6103. However, a reading of 26 U.S.C. § 6103 reveals that  
19 it is completely inapplicable to this request, as said section only deals with rules  
20 regarding the production of tax records by the government or certain designated  
21 persons, of which Ticketmaster is not included.

22 Finally, RMG's request is specifically tailored for the production of  
23 documents that show claims for loss of goodwill. It does not request all financial  
24 data of the Plaintiff.

25 **III. TICKETMASTER'S REFUSAL TO PRODUCE DOCUMENTS**  
26 **PURSUANT TO REQUEST NUMBERS 46-48 AND 51-66.**

27 The discovery cut-off date in this matter is May 23, 2008. On March 10,  
28

1 2008, the court dismissed RMG's anti-trust counter-claims, and granted RMG 30  
2 days leave to amend. RMG will amend its counter-claims by April 9, 2008. RMG  
3 still has anti-trust affirmative defenses which are alive, have not been dismissed,  
4 and have never been challenged by Ticketmaster.

5 Ticketmaster's refusal to produce these documents based upon the fact that  
6 RMG's anti-trust counterclaims were dismissed, even though RMG's anti-trust  
7 affirmative defenses still exist, and even though RMG will be filing amended anti-  
8 trust counterclaims by April 9, 2008, is clearly a wrongful attempt to foreclose  
9 RMG's ability to obtain said documents by the discovery cutoff.

10 Finally, Ticketmaster has failed to cite to any relevant authority to support its  
11 failure to produce documents responsive to these requests, thus, it should be  
12 ordered to produce same forthwith.

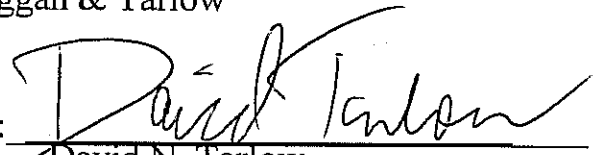
13 **IV. CONCLUSION.**

14 Based upon the foregoing, it is respectfully requested that Defendant's  
15 Motion to Compel be granted in its entirety.

16 Dated: April 8, 2008

Coggan & Tarlow

17  
18 By:

  
David N. Tarlow  
Attorneys for Defendant  
RMG TECHNOLOGIES, INC.

1 **PROOF OF SERVICE**

2  
3 **STATE OF CALIFORNIA** )  
4 **COUNTY OF LOS ANGELES** ) ss:

5 I am employed in the County of Los Angeles, State of California. I am over  
6 the age of 18 and not a party to the within action; my business address is: **1925**  
7 **Century Park East, #2320, Los Angeles, California 90067** Case 2:07-cv-02534-ABC-JC Document 107 Filed 04/08/2008 Page 6 of 6

8 On **April 8, 2008**, I served the foregoing document described as **RMG**  
9 **TECHNOLOGIES, INC.'S SUPPLEMENTAL MEMORANDUM OF LAW IN**  
10 **SUPPORT OF ITS MOTION TO COMPEL TICKETMASTER'S**  
11 **PRODUCTION OF DOCUMENTS** on all interested parties in this action by  
12 placing true copies thereof, enclosed in sealed envelopes, and addressed as follows:

13 Robert H. Platt  
14 Mark Lee  
15 Donald R. Brown  
16 Raaqim Knight  
17 Manatt, Phelps & Phillips, LLP  
18 11355 W. Olympic Blvd.  
19 Los Angeles, CA 90064

20 **(X ) BY MAIL.** I caused such envelopes to be deposited in the mail. I am  
21 "readily familiar" with the firm's practice of collection and processing  
22 correspondence for mailing. Under that practice it would be deposited with U.S.  
23 postal service on the same day with postage thereon, fully prepaid, at Los Angeles,  
24 California in the ordinary course of business.

25 I declare under penalty of perjury that I am the member of the bar of this  
26 court at whose direction that the service herein was made.

27 Executed on this **8<sup>th</sup>** day of **April, 2008**, at Los Angeles, California.

28   
DAVID N. TARLOW